

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TRACY DAVIS,

Plaintiff,

v.

Case Number 08-12596-BC

Honorable Thomas L. Ludington

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**ORDER REJECTING REPORT AND RECOMMENDATION, GRANTING
PLAINTIFF'S MOTION TO REISSUE SUMMONS, AND REFERRING CASE TO
MAGISTRATE JUDGE VIRGINIA MORGAN**

On June 18, 2008, Plaintiff Tracy Davis ("Plaintiff") filed a complaint challenging Defendant Commissioner of Social Security's denial of disability benefits. Dkt. # 1. To this point, Plaintiff has not provided proof of service. On October 10, 2008, Magistrate Judge Virginia Morgan issued a second notice directing Plaintiff to serve Defendant. Dkt. # 8. On January 13, 2009, Plaintiff retained new counsel. On January 26, 2009, Plaintiff moved for the additional time to serve Defendants and requested the summons be reissued. Dkt. # 10. On January 28, 2009, the magistrate judge issued a report and recommendation that the complaint be dismissed for insufficient service and to deny Plaintiff's motion. Dkt. # 11. The magistrate judge concluded that Plaintiff had not shown good cause for not accomplishing service. *Id.* On February 6, 2009, Plaintiff filed an objection contending that counsel had not served the summons because each had expired. Dkt. # 12. In addition, Plaintiff requested thirty days to serve the complaint. *Id.*

Fed. R. Civ. P. 4(m) requires a party to serve a complaint within 120 days. If service is not accomplished within that time, the complaint must be dismissed or the Court may direct service within a certain time. *Id.* If a plaintiff "shows good cause for the failure, the court must extend time

for service for an appropriate period.” *Id.* Here, Plaintiff has retained new counsel, indicates that the previous summons have expired, and intends to provide service within thirty days. The Court will permit Plaintiff to do so.

Accordingly, it is **ORDERED** the magistrate judge’s report and recommendation is [Dkt. #11] is **REJECTED** and Defendant’s objection [Dkt. # 12] is **SUSTAINED**.

It is further **ORDERED** that Plaintiff’s motion to reissue summons [Dkt. # 10] is **GRANTED**. Plaintiff may serve a copy of the complaint on Defendant on or before **March 11, 2009**.

It is further **ORDERED** that the matter is **REFERRED** to Magistrate Judge Virginia Morgan in a manner consistent with the notice of reference pursuant to E.D. Mich. LR 72.1(b)(3). *See* dkt. # 2.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 10, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 10, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS